IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BM BOARD EDUCATION TRUST, SUTRAPADA, THROUGH SECRETARY

Versus

STATE OF GUJARAT SECRETARY

Appearance:

MR JAYANT PATEL for Petitioner

MR IM PANDYA, AGP, for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/07/2000

ORAL JUDGEMENT

1. Heard Mr. Jayant Patel, learned advocate appearing for the petitioner and Mr. I.M. Pandya, learned Assistant Government Pleader, for the respondents.

2. Rule. Mr. Pandya waives service of Rule on

behalf of the respondents. With the consent of the parties, the matter is taken up today for final hearing.

3. The petitioner is a charitable trust running an educational institution at Sutrapada, which is aggrieved by order of the District Collector, Junagadh, dated 3.11.1998 and subsequent order of the Deputy Secretary (Appeals), Revenue Department, dated 15.1.2000, communicated on 23.3.2000, whereby the land bearing survey No.2192 Paiki admeasuring 72141 sq. metres granted to the petitioner-institution for the purpose of Ashram Shala, hostel and play ground by resolution No.MMJ/5196/1910-G dated the 14th August, 1996 read with order of the Collector, Junagadh, bearing No. Land/2-C/3224/96 dated the 7th September, 1996 came to be cancelled. The trust was, however, subsequently granted survey No.2168 in lieu of survey No.2192 for that very purpose by a resolution of the Government dated the 2nd September, 1997. The said grant came to be cancelled by the impugned order on the ground that a no objection certificate required to be issued in favour of the trust by the Director, Coastal Zone Authority, has not been produced by the trust and, therefore, the trust does not seem to be interested in having the land. The order of the Collector was challenged by the petitioner before the Secretary, who said that he had no jurisidiction as the order of the Collector was, in fact, passed on the basis of the order of the Government. This has given rise to the present petition.

4. Mr. Patel, learned advocate appearing for the petitioner, submitted that the turst is a charitable institution running an educational institution. The land in question is being used for play ground of the school pupil. An application for requisite permission was made by the trust in December 1997, but the authorities did not grant the permission till June 17, 1999, which has given rise to the impugned order. There is no default on part of the petitioner. He submitted that while passing the order no opportunity of hearing was given to the petitioner, otherwise the petitioner could have brought this fact to the notice of the authority concerned. Mr. Patel submitted that, now, the postal authorities have granted requisite permission and, therefore, the impugned order may be quashed and set aside.

5. On the other hand, Mr. Pandya, learned Assistant Government Pleader, has opposed this petition. He submitted that the order was passd considering the material on record and, admittedly, there was no such certificate when the order was passed and, therefore, the

impugned order may not be interfered with.

6. Considering rival side contentions, what transpires is that the respondent authorities did consider it fit to grant the land on merits and land was granted. The impugned order came to be passed only for the reason that no objection certificate required to be obtained from the postal authorities and produced by the petitioner was not produced. Now, if the facts are seen, it is clear from Annexure-E that the institution had made an application in December 1997 for obtaining the certificate from the Coastal Regulation Zone Authority. Somehow, the permission was not granted till the 17th June, 1999, during which the impugned order came to be passed and, now, on 17th June, 1999, the requisite permission is granted (Annexure-I). The order cancelling the grant, therefore, requires to be reconsidered in light of the fact that the grant was made on merits, that the petitioner is not responsible for the reason for which the grant is cancelled and now that reason does not survive. Under the circumstances, the petitioner's case deserves to be considered in light of the above factual aspects.

7. The petition is, therefore, allowed to that extent that the impugned order is quashed and set aside. The Government will reconsider its impugned decision in light of the changed fact situation and the observations made above. Status quo in respect of possession of the land shall be maintained by parties till the Government redecides the question. The petitioner shall be heard while deciding the question afresh. Rule is made absolute, accordingly.

Direct service is permitted.

[A.L. DAVE, J.]
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